2434

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1900.

No. 585 209.

THE CAPITAL CITY LIGHT AND FUEL COMPANY,
PLAINTIFF IN ERROR,

vs.

THE CITY OF TALLAHASSEE.

IN ERROR TO THE SUPREME COURT OF THE STATE OF FLORIDA.

FILED DECEMBER 10, 1900.

(17,990.)

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SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1900.

No. 505.

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vs.

THE CITY OF TALLAHASSEE.

IN ERROR TO THE SUPREME COURT OF THE STATE OF FLORIDA.

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1 Be it remembered that on the 26th day of June, A. D. 1900, at a regular term of the supreme court of the State of Florida, came the appellant, The Capital City Light and Fuel Company, a corporation under the laws of the State of Florida, by counsel, and filed in the clerk's office of the supreme court of Florida a transcript of the record of the proceedings and order of the circuit court of Florida for Leon county in a certain cause wherein The Capital City Light and Fuel Company, a corporation under the laws of the State of Florida, was complainant, and The City of Tallahassee, a municipal corporation of the State of Florida, was defendant, and of the appeal therein from the decree of the circuit court therein rendered: which said transcript of the record of the cause aforesaid and subsequent proceedings to decree and appeal therefrom is in the words and figures as follows, to wit:

Transcript of record of proceedings in the circuit court of Leon county, Florida, in the suit of The Capital City Light and Fuel Company, a corporation under the laws of the State of Florida, complainant, against The City of Tallahassee, a municipal corporation of the State of Florida, defendant.

On the 1st day of March, 1900, the complainant filed its bill of complaint against the defendant in words and figures following, to wit:

To the judge of the circuit court of the second judicial circuit of the State of Florida in and for Leon county, in chancery sitting:

The Capital City Light and Fuel Company, a corporation under the laws of the State of Florida, brings this its bill of complaint against the City of Tallahassee, a municipal corporation of the State of Florida.

2 And thereupon your orator complains and says:

That the Tallahassee Gas and Electric Light Company was duly and legally incorporated on the 20th day of December, A. D. 1887, under the general incorporation laws of the State of Florida then in force, and by such incorporation was vested with all the rights, privileges, and franchises conferred by the said general incorporation laws, as they then existed, upon companies incorporated thereunder; that the general nature of the business to be conducted by said corporation, as expressed in its articles of association, was to construct, maintain, and operate gas works and electric light works in the city of Tallahassee, in Leon county, Florida, and to manufacture gas for light and fuel, or to dispose of and deal in coal or wood for fuel, and to maintain and operate electric light machinery for supplying light in said city, or for manufacturing and dealing in any and all manner of artificial light or heat within the city. A copy of the articles of incorporation of said company is hereto attached, marked Exhibit A, and made a part hereof.

That after the incorporation of the said Tallahassee Gas and Elec-

tric Light Company, as aforesaid, the said company applied to the city of Tallahassee for the franchise of constructing gas and electric light wo-ks in the said city of Tallahassee for the purposes declared in its charter, and an ordinance was duly passed by the council of said city on the 4th day of January, A. D. 1888, which was approved the following day by the mayor of said city, giving and granting to said Tallahassee Gas and Electric Light Company the authority to construct gas and electric light works in said city, and for that purpose the right to lay its pipes in any and all the streets, alleys, and lots thereof, and to erect such lamp posts or poles or towers as might be necessary for furnishing gas or electric lights in said city,
3 and to that end to make such excavations or erect such structures, poles, or towers and run wires thereto along the streets of said city as might be necessary or essential.

That by said ordinance the said city of Tallahassee did obligate itself to take all gas which it might wish to consume in lighting its streets or buildings from said company at a price of not more than one dollar and fifty cents per thousand feet for such as might be used in public buildings used exclusively by said city, and at a price of not more than thirty dollars per annum for each street lamp of not less than twenty-candle power, and through burners of the capacity of four feet per hour for the period of twenty-five consecutive years from the completion of said gas works.

That by the terms of said ordinance it was also provided that said company should not be permitted to manufacture and supply gas for illuminating purposes of less than eighteen-candle power, and should not be permitted to charge private consumers for said gas at any time an amount exceeding two dollars and fifty cents per thousand feet, or to charge the city for gas lamps exceeding thirty dollars per annum for each lamp of not less than twenty-candle power through burners of a capacity of four feet per hour.

That it was further provided by said ordinance that the privileges and licenses therein and thereby granted should be exclusive in and to the Tallahassee Gas and Electric Light Company, their associates, successors, and assigns, for and during the term of twenty-five years.

That it was also provided by said ordinance that within thirty days after it went into effect the said Tallahassee Gas and Electric Light Company should file its written acceptance thereof in the office of the city clerk in the said city of Tallahassee; whereupon the same should become binding on both parties; and that the
4 construction of the said gas works should be commenced within thirty days after the filing of the said acceptance, and the said gas works should be completed and in practical operation within six months after the commencement of the construction thereof, and that the said company should put in and operate electric lights as soon as sufficient consumers can be secured to pay eight per cent. interest per annum on the additional capital required to purchase the machinery for and to put in practical operation the said electric lights. A copy of said ordinance is hereto attached, marked Exhibit B, and made a part hereof.

That the said Tallahassee Gas and Electric Light Company constructed its gas works under and in conformity to the terms and provisions of its charter and of the ordinance aforesaid, and began and continued the operation of the same by virtue and in pursuance thereof, and exercised and enjoyed, without violation, invasion, interference, infringement, or impairment, all and singular the powers, rights, privileges, licenses, and franchises granted to or conferred upon said company by the law of its incorporation and the ordinance of the city of Tallahassee aforesaid, including the contract for lighting the streets and buildings of said city at the price and on the terms provided in said ordinance, until on or about the 8th day of November, A. D. 1893, when all and singular the gas works, plant, and property of every kind and character of said company were taken possession of by a receiver appointed by the circuit court of the second judicial circuit of the State of Florida in and for Leon county, in chancery sitting, in a certain cause wherein William M. McIntosh, Jr., as trustee, was complainant and the said Tallahassee Gas and Electric Light Company was defendant.

That by virtue of a decree of foreclosure and sale made in said cause on the 4th day of January, A. D. 1894, all lands belonging to the said Tallahassee Gas and Electric Light Company, with the tenements, hereditaments, and appurtenances thereon and thereunto belonging or in anywise appertaining, and also the plant, machinery, and attachments thereto, whether movable or immovable, or whether pertaining to the realty or the personalty, and the corporate franchise of said company, and all classes of property, real, personal, and mixed, of said company, then owned by it, were offered for sale to the highest bidder on the 5th day of February, A. D. 1894, and, on being so offered, were bought by one William A. Rawls, and a deed was made to him therefor by the master in chancery in said cause, under the order and decree of said court.

That thereafter, to wit, on the 19th day of March, A. D. 1894, the Capital City Light and Fuel Company was duly incorporated under the general incorporation laws of the State of Florida; that the general nature of the business to be conducted by said corporation, as expressed in its articles of association, was to acquire, construct, improve, maintain, and operate gas works and electric light works in and adjacent to the city of Tallahassee, in Leon county, State of Florida; and to manufacture gas for light and fuel; to dispose of and deal in coal or wood for fuel; to construct, maintain, and operate electric light machinery for supplying light in and about the said city, or for manufacturing and dealing in any and all manner of artificial light or heat. A copy of the articles of incorporation of said company is hereto annexed, marked Exhibit C, and is made a part hereof.

That the said Capital City Light and Fuel Company was incorporated with the purpose and intent of acquiring and operating, under the terms and provisions of the said ordinance of the city of Tallahassee, the said property so purchased by the said William A. Rawls under the decree aforesaid, and the said property was purchased

by the said Rawls with the intent and purpose of transferring
6 it to said company for such purposes, and, in pursuance of such intent and purpose, the said property was made over by him to the said Capital City Light and Fuel Company, and the said company at once entered into the possession and assumed the management and control thereof, and continued the manufacture of gas for the purpose of supplying said city and its inhabitants with light and heat, and has since coming into possession thereof enlarged and extended its plant to meet the increased demands of said city and its inhabitants, and the said city has ever since recognized, treated, and dealt with the said Capital City Light and Fuel Company as the lawful successor to the said Tallahassee Gas and Electric Light Company and the legal assignee of all the rights, franchises, privileges, and contracts created and conferred on the said last-named company by the ordinance of the city of Tallahassee aforesaid.

That at the session of the legislature of the State of Florida held in the year 1899 an act was passed by said legislature, and approved by the governor of said State May 27th, 1899, entitled "An act to enable the city of Tallahassee to exercise the powers provided by chapter 4600 of the Laws of Florida, entitled 'An act to enable cities and towns to manufacture and distribute gas and electricity and to construct, purchase, lease and establish and maintain within its limits one or more plants for the manufacture and distribution of gas and electricity for furnishing light for municipal use and for the use of such of its inhabitants as may require and pay for the same, as herein provided,' approved June 5th, 1897, and to declare the manner in which such city may exercise such powers."

That by section 2 of said act it was provided as follows:

"SEC. 2. That said city of Tallahassee may at any regular meeting of its city council, or at a special meeting duly called for such purpose, pass a resolution declaring that it is expedient for
7 such city to exercise the authority granted by section 1 of said act, approved June 5th, A. D. 1897; but a vote of a majority of such council shall be necessary to pass such resolution, and such resolution shall receive the approval of the mayor, or in case of his disapproving the same it shall be passed over his vote by a two-thirds vote of the council. Such resolutions shall provide for the submission to the registered voters of the city, residing therein and who own real estate therein and have paid their taxes for the year last due thereon, the question of the ratification of such resolution at a regular election or at a special election to be called and held for that purpose; and a majority of the votes cast at such election shall be necessary to such ratification; such election to be called and held and the electors registered and returns thereof made in the manner hereinafter provided for in case of an election upon the question of the issue of bonds. When the result of such election is against such ratification, no similar resolution shall be submitted for ratification until after the expiration of one year thereafter. A majority vote in favor of such ratification shall establish the right of the city to exercise the power to construct, purchase, lease and establish and maintain within its limits, one or more plants for the manufacture

and distribution of gas and electricity, or either, for furnishing light for municipal use and for the use of such of its inhabitants as may require and pay for the same, as provided in section 1 of said chapter 4600 of the Laws of Florida."

That by section 3 of said act it is provided as follows:

"SEC. 3. If said city of Tallahassee shall vote to construct or purchase or lease, and to establish and maintain within its limits any such plant as above provided for, or for reconstructing and enlarging the same, as provided in the fifth section of said act, approved June 5, A. D. 1897, it may pay for the same by the issue of
8 bonds of the city payable within a term of not exceeding thirty years, and bearing interest at a rate not to exceed 5 per cent. per annum. Such bonds shall not be disposed of for less than par and accrued interest; and the indebtedness thereby created shall not be included in the limit of indebtedness of the said city now provided by law; but such bonds shall not be issued until an ordinance authorizing their issue shall have been adopted by the city or town council at a regular meeting or at a special meeting called for such purpose, which ordinance shall specify the purpose for which such bonds are to be issued, and the maximum amount of the issue, and the time of their maturity and the rate of interest and when and where the same shall be made payable: nor until such ordinance shall have been ratified by a majority of the vote of the registered voters of such city, voting at an election to be called for the purpose of taking the sense of such voters on such question and possessing the proper qualifications hereinbefore provided. The city council shall provide for the registration of such voters by a registration to be closed at least five days before such election, and for returns of election." * * *

That under and by virtue of the provisions of said act the council of said city of Tallahassee, on the 8th day of September, 1899, passed a resolution, which was approved by the mayor of said city, declaring it to be expedient for said city of Tallahassee to exercise the authority granted by the act of the legislature aforesaid to construct, purchase, establish, and maintain within the limits of said city a plant for the manufacture of electricity for furnishing lights for municipal use and for the use of such of its inhabitants as may require and pay for the same, such plant to include suitable land, structures, easements, water privileges, stations, boilers, engines,
dynamos, tools, machinery, pipes, conduits, hose, conductors,
9 burners, and other apparatus and appliances for making, generating, distributing, and using electricity for lighting purposes.

That the said council also, by virtue and under the authority of said act, passed an ordinance on the said 8th day of September, 1899, which was approved by the mayor of said city, providing for the issue of bonds by said city of Tallahassee for the purpose of establishing and maintaining an electric plant for municipal use and the use of its inhabitants, and providing for the submission of the question of the ratification of such ordinance to an election of the qualified voters of said city.

That an election was held by virtue of a proclamation of the mayor of the said city and the resolution and ordinance aforesaid upon the question of the ratification of said resolution and upon the question of the ratification of said ordinance by the qualified voters of said city on the 10th day of October, 1899, and both said resolution and said ordinance were ratified by such voters at such election.

That afterwards the said city of Tallahassee advertised for bids for the bonds to be issued under the provisions of said ordinance, and at the meeting of the council of said city, at which the bids for such bonds were to be received and opened, your orator, by its attorney, presented to the said council a written protest against the issue and sale of bonds by the said city for the purpose of establishing an electric lighting plant in said city, and stating that your orator is the lawful successor to the Tallahassee Gas and Electric Light Company, and the assignee of all the rights, privileges, and franchises which were granted to and conferred upon said company by an ordinance of the city of Tallahassee passed the 4th day of January, A. D. 1888, and approved by the mayor of said city the 5th day of said month, entitled An ordinance to grant certain privileges to the Tallahassee Gas and Electric Light Company, and that the construction of an electric lighting plant in said city by the municipality or other corporation or person would be an invasion and violation of the exclusive privileges conferred upon said Tallahassee Gas and Electric Light Company, and to which the Capital City Light and Fuel Company has succeeded. A copy of said protest is hereto annexed, marked Exhibit D, and is made a part hereof.

That notwithstanding said protest the said council accepted bids for the entire proposed issue of sixteen thousand dollars of bonds of said city.

That afterwards said city advertised for bids for putting in an electric plant for said city according to certain plans and specifications, which had been prepared at the instance of said city, and which plans contemplate a system for lighting the streets of said city and the residences and business houses of its inhabitants; that bids were received by said city pursuant to such advertisement from a number of different sources, and the said bids were opened and considered at a meeting of the council of said city held on Thursday, February 15th, 1900.

That at said meeting your orator, by its attorney, presented a written protest to said council against the said city of Tallahassee entering into a contract with any individual, firm, or corporation for putting in, erecting, or establishing an electric lighting plant in said city, as the construction of such plant by the municipality or other corporation or person would be an invasion and violation of the exclusive privileges conferred upon the said Tallahassee Gas and Electric Light Company by the said ordinance of January 4th, 1888, and to which the Capital City Light and Fuel Company has succeeded. A copy of such protest is hereto annexed, marked Exhibit E, and is made a part hereof.

That your orator is informed and believes, and thereupon
11 alleges, that the said city of Tallahassee, through its council, has provisionally accepted certain of said bids for furnishing and putting in such electric plant, but that absolute contracts have not yet been entered into by and between the said city and the corporation and persons whose bids were accepted for furnishing and installing such electric lighting apparatus and machinery, and that the bonds authorized to be issued and sold by said city for the purpose of establishing and maintaining an electric plant in said city have not yet been executed and delivered, but your orator is advised and believes, and thereupon alleges, that unless restrained by this honorable court the said city of Tallahassee will deliver said bonds and will enter into an absolute contract for furnishing, erecting, and installing an electric lighting plant in said city, and that it is the purpose and intention of said city, if such plant is installed, not only to use the same for the purpose of lighting its streets and public buildings, but also for furnishing lights to its inhabitants for lighting their residences and places of business for compensation.

That your orator is advised and believes, and thereupon charges, that the law under which the Tallahassee Gas and Electric Light Company was incorporated and the ordinance of the city of Tallahassee passed January 4th, 1888, aforesaid, conferred upon the said company and its successors and assigns the exclusive privilege and franchise of lighting said city by gas or electricity and of using the streets of said city for that purpose for the period of twenty-five years from the time of the completion of its gas works; that the said Capital City Light and Fuel Company is the lawful successor to said Tallahassee Gas and Electric Light Company and the lawful assignee of all its rights, privileges, and franchises, and, among them, the exclusive privilege and franchise of lighting said city by gas or
12 electricity and of using the streets of said city for that purpose, and that the said city of Tallahasse cannot lawfully invade, infringe, impair, or violate the said privileges and franchises during the said term of twenty-five years by installing or establishing an electric lighting plant of its own to come into competition with your orator in such lighting business.

That at the time of the passage of the said ordinance of January 4th, 1888, the said city of Tallahassee had notice of the objects and purposes for which the Tallahassee Gas and Electric Light Company was incorporated, as declared in its charter, and of the powers, privileges, and franchises which were conferred upon it by the law of its being; and at the time of the passage of said ordinance the power of the city of Tallahassee with respect to public lighting was confined, under the law of its being, which was and is the act approved February 4, 1869, entitled "An act to provide for the incorporation of cities and towns, and to establish a uniform system of municipal government in this State," and the amendments thereof, to lighting the streets of said city, and did not extend to furnishing for pay lights for the use of its inhabitants in their residences and places of business; that the said Tallahassee Gas and Electric Light Company, relying upon the rights, privileges and franchises conferred

upon it by the law of its organization, and the ordinance of said city of Tallahassee of January 4th, 1888, and the exclusive nature of the same, and the powers of said city under its charter, was induced to invest a large amount of money in its gas plant for the purpose of furnishing said city with gas for street lighting and for the use of its inhabitants for light and heat in their residences and places of business, and your orator charges that a contract was thereby created between the said company and the said city, the obligation of which cannot be violated by subsequent legislation.

That the said Capital City Light and Fuel Company, relying on such grants to the said Tallahassee Gas and Electric Light Company, and the exclusive exercise thereof by said company from the time of the completion of its works up to the time the same were taken in charge by a receiver of this court, as hereinbefore alleged, and the contract thereby created and existing between the said city and the said company and its successors and assigns, invested large sums of money in purchasing said plant and works and in enlarging and extending the same to meet the increased demands of the said city and its inhabitants, and by reason of the increased number of lights taken by said city after the acquisition of said gas works by the Capital City Light and Fuel Company the said company decreased the price for street lighting to twenty-five dollars per annum for each lamp, and the said city has continued uninterruptedly from the installation of said gas plant to the present time to take gas from said companies respectively for lighting its streets and municipal buildings.

13

That your orator is informed and believes, and thereupon alleges, that the population of said city of Tallahassee is about four thousand, and that a large proportion of it is of a class that is financially unable to use either gas or electricity for domestic lighting, and for such reasons the said city of Tallahassee is incapable of sustaining two lighting systems.

That, from the best of your orator's knowledge, information, and belief, there has never been a time since the establishment of said gas works in said city that your orator or its predecessor could have procured sufficient consumers to pay eight per cent. interest per annum on the additional capital required to purchase the machinery for and to put into practical operation an electric lighting system in said city.

That your orator is informed and believes, and thereupon alleges, that the establishment of an electric lighting plant by said city in competition with the gas plant of your orator will be destructive of the value of your orator's lighting plant and an invasion, impairment, and violation of its rights and franchises hereinbefore set out and declared and a violation of the obligation of the contract made and entered into between the said city of Tallahassee and the Tallahassee Gas and Electric Light Company and its successors and assigns.

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That the alleged wrong and injury, if permitted, will be destructive of the property of your orator in the character in which it has been

enjoyed and will cause your orator irreparable injury, and your orator has no adequate remedy in a court of law.

To the end, therefore, that the said defendant, The City of Tallahassee, may, under its corporate seal, full, true, direct, and perfect answer make to all and singular the premises as fully and particularly as if the same were here repeated and the said defendant specially interrogated thereto;

And that the said city of Tallahassee, its officers, agents, and servants, may be enjoined from issuing and disposing of the said sixteen thousand dollars of bonds of said city, or any of them, which were authorized to be issued by the ordinance entitled An ordinance providing for the issue of bonds by the city of Tallahassee for the purpose of establishing and maintaining an electric plant for municipal use and the use of its inhabitants, and providing for the submission of the question of the ratification of such ordinance to an election of the qualified voters of said city, approved September 11th, 1899, and the election held thereunder on the 10th day of October, 1899, and from delivering the said bonds or any of them to the person or persons, corporation or corporations, whose bids therefor have been received and accepted by the council of said city, or to any other person or persons, corporation or corporations;

And that the said city of Tallahassee, its officers, agents and servants, may be enjoined from establishing and maintaining an electric plant for the manufacture of electricity for furnishing light for municipal use and for the use of such of its inhabitants as may require and pay for the same, and from furnishing electric lights to the inhabitants of said city for lighting their residences and places of business for the balance of the period of twenty-five years for which the exclusive franchise of constructing gas and electric works in said city, and using the streets thereof for that purpose, and furnishing gas and electric lights for said city and its inhabitants, was granted, to wit, until the — day of ——, A. D. 1913;

And that the said city of Tallahassee, its officers, agents and servants, may be enjoined from making or entering into any contract or contracts, or from performing any contract or contracts already made, with any corporation, person, or firm for furnishing electric apparatus and other machinery for an electric lighting plant to be installed in said city, and from making or entering into any contract or contracts, or from performing any contract or contracts already made with any person, firm, or corporation for installing an electric lighting plant in said city during the period aforesaid;

And that your orator may have such further or other relief in the premises as the nature of the circumstances of the case may require and to your honor shall seem meet.

May it please your honor to grant unto your orator, not only the writ of injunction as hereinbefore prayed, but also a writ of subpœna, to be directed to the said defendant, The city of Tallahassee, thereby commanding it, at a certain time and under a certain penalty therein to be limited, to appear before this honorable court and

then and there full, true, direct, and perfect answer make to
16 all and singular the premises, and further to stand to, perform, and abide such further order, direction, and decree therein as to this honorable court shall seem meet.

And your orator will ever pray, &c.

FRED. T. MYERS,
Solicitor for the Complainant.

STATE OF FLORIDA, }
County of Leon. }

Before me, Council A. Bryan, clerk of the circuit court in and for the county and State aforesaid, personally appeared C. A. Spencer, who on oath says that he is the superintendent of The Capital City Light and Fuel Company, the complainant in the foregoing bill of complaint, and that the matters and things in the said bill set forth are true, except such as are therein alleged to be on information and belief, and those he believes to be true.

C. A. SPENCER.

Sworn to and subscribed before me this the 28th day of February, A. D. 1900.

COUNCIL A. BRYAN,
Clerk Ct. Ct., L. C., Florida.

EXHIBIT A.

Articles of Association.

Tallahassee Gas and Electric Light Company.

Know all men by these presents that we, the undersigned, Edward S. Crill, Wm. M. McIntosh, Jr., and Charles Monroe, all of the State of Florida, do hereby associate ourselves into a company or association to be known and designated as the—

1st. Tallahassee Gas and Electric Light Company, and in
17 such name to sue and be sued, hold, lease, buy, sell, mortgage, and otherwise dispose of all such realty and personalty as may be necessary for the purposes hereinafter explained.

2nd. The object and purposes of this association *is* to construct, maintain, and operate gas works and electric light works in the city of Tallahassee, in Leon county, Florida, and to manufacture gas for light and fuel, or to dispose of and deal in coal or wood for fuel, and to maintain and operate electric light machinery, for supplying lights in said city or for manufacturing and dealing in any and all manner of artificial light or heat within said city.

3d. The duration of said association shall be for the term of twenty-five years.

4th. The capital stock of said company shall be fifty thousand dollars, to be divided into five hundred shares of stock of one hundred dollars each.

5th. The amount of indebtedness which may at any time be created shall never exceed the amount of capital stock.

6th. The principal place of business shall be in Tallahassee, Florida.

7th. The capital shall be paid in as may be required by law and the by-laws hereafter to be adopted by the association.

8th. The business of the company shall be conducted by a board of not less than three or more than five directors, one of whom shall be made president, and then officers shall be elected annually.

There shall be such subordinate officers as may be hereafter determined upon.

In testimony whereof we have hereunto set our hands this December 20th, A. D. 1887.

EDWARD S. CRILL.
W. M. McINTOSH, JR.
CHAS. MUNROE.

18 Filed in office secretary of state December 20th, 1887.

STATE OF FLORIDA, } ss:
Office Secretary of State, }

I, Jno. L. Crawford, secretary of state of the State of Florida, do hereby certify that the foregoing is a true and correct copy of the articles of association of the Tallahassee Gas and Electric Light Company as filed in this office.

Given under my hand and the great seal of the State of Florida, at Tallahassee, the capital, this the 24th day of February, A. D. 1900.

[SEAL.] JNO. L. CRAWFORD,
Secretary of State.

Cancelled U. S. rev. 10-cts. stamp attached.

EXHIBIT B.

An ordinance entitled An ordinance to grant certain privileges to the Tallahassee Gas and Electric Light Company.

Be it ordained by the city council of the city of Tallahassee:

SECTION 1. That the Tallahassee Gas and Electric Light Company be and they are hereby authorized to construct gas and electric light works in the city of Tallahassee, and for that purpose that the said company shall have the right to lay their pipes in any and all streets in said city and in the alleys and lots of the same, and to erect such lamp posts or poles or towers, as may be necessary or essential for furnishing gas or electric lights in said city of Tallahassee, and to this end the Tallahassee Gas and Electric Light Company are authorized to make such excavations or erect such structures, poles or towers, and run wires thereto along the streets
19 of said city as may be necessary or essential: Provided, that in laying such pipes or erecting such lamp posts, or poles or towers, the said company shall not obstruct any street for a longer period than twelve hours.

SEC. 2. That the said company shall, whenever it shall make any

excavation in any street or shall have any material in any street, place lights to a sufficient number upon such excavations and material to warn all persons from such excavations and material at night.

SEC. 3. That the said company in constructing its works upon any street in the city of Tallahassee, shall first submit to the street committee the streets upon which pipes are to be laid, and shall abide any order of the street committee made therein governing the manner and time in which said pipes shall be laid.

SEC. 4. That the said company in accepting this ordinance shall become liable to any and all damages accruing to private individuals by reason of the construction of such works or which may arise from negligence of said company or its employees and shall hold the city harmless against any damages which may arise as hereinbefore mentioned.

SEC. 5. That the said company shall not obstruct by placing material or making excavations for their pipes in any more of the streets of the city at any one time than will be necessary for the carrying on of its work, and the said company shall, as soon as practicable, remove any and all obstructions from the streets and place the streets in as near the same condition as they were prior to excavations as is possible, and in constructing said works, the said company shall follow established grades of the streets, and the city surveyor is required to furnish the grade at the expense of the company, when requested by said company to do so.

SEC. 6. The said company shall not be permitted to manufacture and supply gas for illuminating purposes of less than eighteen (18) candle power, and shall not be permitted to charge private consumers for said gas at any time an amount exceeding two and one-half dollars per one thousand feet, and the charge to the city for gas lamps shall not exceed thirty dollars per annum for each lamp of not less than twenty-candle power, through burners of a capacity of four feet per hour.

SEC. 7. That within thirty days after the day that this ordinance takes effect, the said Tallahassee Gas and Electric Light Company, their associates, successors and assigns, shall file their written acceptance thereof in the office of the city clerk in the said city of Tallahassee, whereupon the same shall become binding on both parties. The construction of the said gas works shall be commenced within thirty days after the filing of said acceptance and said gas works shall be completed and in practical operation within six months after the commencement of the construction thereof, and the said Tallahassee Gas and Electric Light Company shall put in and operate electric lights as soon as sufficient consumers can be secured to pay eight per cent. interest per annum on the additional capital required to purchase the machinery for and put in practical operation the said electric lights.

SEC. 8. That if the said company shall fail to complete the said gas works within the time prescribed in the foregoing section of this ordinance, or shall fail to furnish gas at any time for the space of six months, or shall violate any of the provisions of this ordi-

nance, the city council of the said city of Tallahassee may in its discretion declare this ordinance null and void and may repeal the same.

SEC. 9. That the said city of Tallahassee do hereby lease and rent to said Tallahassee Gas and Electric Light Company, and its successors and assigns, at an annual rental of one dollar per year for the term of ninety-nine (99) years, payable by said company or its successors, on the first day of each year, three (3) acres of land
21 adjoining the land now occupied by the Tallahassee Ice Company and adjoining the right of way of the Florida Railway and Navigation Company's line of road, said land to be selected and surveyed by said Tallahassee Gas and Electric Light Company; said land to be used for the plant and for such other purposes as may be required by said company for the transaction of their business. As soon as said Tallahassee Gas and Electric Light Company shall have selected and surveyed said three (3) acres of land, the mayor and city clerk of said city, shall execute under the seal of said city, and deliver to said Tallahassee Gas and Electric Light Company a lease in proper form of such three (3) acres of land with a particular description thereof according to said selection and survey and according to the terms hereof.

SEC. 10. That the said city of Tallahassee, in consideration of the foregoing requirements being complied with on the part of the said Tallahassee Gas and Electric Light Company, their associates, successors and assigns, shall and hereby obligates itself to take all gas which it may wish to use in lighting its streets or buildings from said company at a price of not more than one and one-half dollars ($1.50) per one thousand feet for such as may be used in public buildings used exclusively by said city, and at a price of not more than ($30) thirty dollars per annum for each street lamp as hereinbefore provided for in section six of this ordinance, for the period of twenty-five consecutive years from the completion of said gas works: Provided, that nothing herein shall be construed as an obligation on the part of the said city of Tallahassee to take any gas from said company.

SEC. 11. That the privileges and licenses herein and hereby granted shall be exclusive in and to said Tallahassee Gas and Electric Light Company, their associates, successors and assigns, for and during the term of twenty-five years.

SEC. 12. All ordinances and parts of ordinances in conflict
22 with this ordinance be and the same are hereby repealed.

Passed by the council in due and proper manner at a regular meeting held on the 4th day of January, A. D. 1888.

T. H. RANDOLPH,
President City Council.

Attest: J. L. DEMILLY, *City Clerk.*

Approved January 5, 1888.
A. J. FISH, *Mayor.*

Exhibit C.

Letters Patent, State of Florida.

To all — whom these presents shall come, Greeting:

Whereas W. M. McIntosh, Jr., W. A. Rawls, and Dougald Maclachlan, on the 20th day of February, A. D. 1894, filed in the office of the secretary of state a proposed charter of a corporation, to be known as the Capital City Light and Fuel Company, with a capital of thirty thousand ($30,000.00) dollars, for the purpose of acquiring, constructing, improving, maintaining, and operating gas works in and adjacent to the city of Tallahassee, in Leon county, State of Florida, and to manufacture gas for light and fuel, to dispose of and deal in coal or wood for fuel, to construct, maintain, and operate electric light machinery for supplying lights in and about said city, or for manufacturing and dealing in any and all manner of artificial light or heat within or adjacent to said city, and have published due notice thereof, and have otherwise complied with the statute in such case made and provided:

23 Therefore the State of Florida hereby incorporates the above-named persons, their associates and successors, into a body politic and corporate in deed and in law by and under the said name of the Capital City Light and Fuel Company, and grants unto them full authority to exercise the powers and privileges of a corporation for the purpose above stated, in accordance with their said charter and the laws of this State.

In witness whereof these presents have been attested with the great seal and signed and countersigned by the governor and [SEAL.] secretary of state of the State of Florida, at Tallahassee, the 19th day of March, A. D. 1894.

H. L. MITCHELL, *Governor.*

JNO. L. CRAWFORD,
Secretary of State.

Notice of Intention to Apply for Letters Patent.

Notice is hereby given of the intention of the undersigned to apply to his excellency H. L. Mitchell, governor of the State of Florida, for letters patent on the following proposed articles of incorporation for the Capital City Light and Fuel Company of Tallahassee, Florida, in pursuance of section 2125 of the Revised Statutes of Florida and amendments thereto.

Dated Tallahassee, Florida, February 20th, 1894.

W. M. McINTOSH, Jr.
W. A. RAWLS.
DOUGALD MacLACHLAN.

24 *Proposed Articles of Incorporation of the Capital City Light and Fuel Company.*

The undersigned do hereby propose to associate themselves together for the purpose of being incorporated and becoming a body corporate under and by virtue of the laws of Florida and adopt the following as the proposed charter:

Article I. The name of this corporation shall be the Capital City Light and Fuel Company, its place of business in the city of Tallahassee, State of Florida.

Article II. The general nature of the business to be transacted by said corporation shall be to acquire, construct, improve, maintain and operate gas works and electric light works in and adjacent to the city of Tallahassee, in Leon county, State of Florida, and to manufacture gas for light and fuel, to dispose of and deal in coal or wood for fuel, to construct, maintain and operate electric light machinery for supplying lights in and about said city, or for manufacturing and dealing in any and all manner of artificial light or heat within or adjacent to said city.

Article III. The amount of the capital stock shall be thirty thousand dollars, to be divided into three hundred shares of $100.00 each. And said capital stock is to be fully paid stock, by the conveyance to said corporation of all the estate, right, title and interest, real, personal and mixed of the owners thereof, free and unincumbered of in and to the gas works, as now situate on the leasehold premises adjacent to the city of Tallahassee, with a transfer of said lease and all appurtenances thereto belonging, together with the main and lateral pipes, lamps, lamp posts, meters, houses and buildings. The same constituting the outfit and plant of a complete gas works, and the assignment and transfer thereto of the corpo-
25 rate franchise with all rights contractual or otherwise thereunder formerly of the Tallahassee Gas and Electric Light Company, acquired by foreclosure sale from said company.

Article IV. The term of this corporation shall begin with the issue of letters patent and continue for ninety-nine years.

Article V. The business of this corporation shall be conducted by a president, a secretary, a treasurer, and a board of three directors. The stockholders at the first meeting in February, A. D. 1894, and annually thereafter, shall elect a president and secretary, treasurer, and a board of three directors. Until the first annual election, the business of this corporation shall be conducted by William M. McIntosh, Jr., president, and William A. Rawls, secretary and treasurer, and by said officers and D. Maclachlan, as directors.

Article VI. The highest amount of indebtedness or liability to which this corporation may subject itself shall be thirty thousand dollars.

Article VII. The subscribers to stock in this corporation are: W. M. McIntosh, Jr., Tallahassee, Fla., W. A. Rawls, Tallahassee, Fla., Dougald MacLachlan, Tallahassee, Fla.

STATE OF FLORIDA, }
County of Leon. }

Personally came before me, a notary public in and for said State and county, William M. McIntosh, Jr., William A. Rawls, and Dougald MacLachlan, who each for himself acknowledges that he is a subscriber to the capital stock of the Capital City Light and Fuel Company, and that each subscribed his name to the foregoing proposed charter of the Capital City Light and Fuel Company, as therein appears.

In witness whereof I have hereunto set my hand and affixed my official seal this 20th day of February, A. D. 1894, at Tallahassee, Florida.

[L. S.] W. M. McINTOSH,
Notary Public.

26 TALLAHASSEE, FLORIDA, *March 19th*, 1894.

I, William A. Rawls, treasurer of the Capital City Light and Fuel Company, of the city of Tallahassee, Florida, do hereby certify that more than ten (10) per cent., to wit, one hundred (100) per cent., of the capital stock of said company has been subscribed and fully paid in accordance with the articles of incorporation of said company and in compliance with the laws of the State of Florida.

W. A. RAWLS.

Sworn to and subscribed before me this 19th day of March, 1894.

[L. S.] W. M. McINTOSH,
Notary Public.

STATE OF FLORIDA, }
Office Secretary of State, } *ss:*

I, Jno. L. Crawford, secretary of state of the State of Florida, do hereby certify that the foregoing is a true and correct copy of the charter of the Capital City Light & Fuel Company as of file and recorded in this office in Book "C" of Articles of Incorporation on pages 310, 311, & 312.

Given under my hand and the great seal of the State of Florida, at Tallahassee, the capital, this the 24th day of February, A. D. 1900.

[L. S.] JNO. L. CRAWFORD,
Secretary of State.

Cancelled U. S. rev. 10 cts. stamp attached.

EXHIBIT D.

NOV. 21ST, 1899.

27 Hon. Frank W. Armstrong, president of the council of the city of Tallahassee, Fla.

SIR: The Capital City Light and Fuel Company hereby respectfully but firmly protests against the issue and sale of bonds by the city of Tallahassee for the purpose of establishing an electric light-

ing plant in said city. This company is the lawful successor of the Tallahassee Gas and Electric Light Company and the assignee of all the rights, privileges, and franchises granted to and conferred upon said company by an ordinance of the city of Tallahassee the 4th day of January, 1888, and approved by its mayor the 5th day of said month, entitled An ordinance to grant certain privileges to the Tallahassee Gas and Electric Light Company.

The construction of an electric lighting plant in said city by the municipality or other person or corporation would be an invasion and violation of the exclusive privileges conferred upon said Tallahassee Gas and Electric Light Company, and to which the Capital City Light and Fuel Company has succeeded.

This company therefore takes this means of putting the council of said city and any intending purchaser of said bonds on notice of the claim of said company and of its intentions to take the necessary steps to protect its interests under said ordinance in case of any attempted invasion of the franchises and privileges thereby granted.

We therefore respectfully request that you lay this protest before the council of which you are the president, and have the same entered in the minutes. We have the honor to be,

Very respectfully,

CAPITAL CITY LIGHT AND FUEL CO.,
By FRED. T. MYERS, *Their Attorney.*

28 EXHIBIT E.

FEB. 15, 1900.

Hon. Frank W. Armstrong, president of the council of the city of Tallahassee, Fla.

SIR: The Capital City Light and Fuel Company hereby respectfully but firmly protests against the city of Tallahassee entering into a contract with any individual, firm, or corporation for putting in, erecting, or establishing an electric lighting plant in said city.

This company is the lawful successor of the Tallahassee Gas and Electric Light Company and the assignee of all the rights, privileges, and franchises granted to and conferred upon said company by an ordinance of the city of Tallahassee passed January 4th, 1888, and approved by its mayor January 5th, 1888, entitled An ordinance to grant certain privileges to the Tallahassee Gas and Electric Light Company.

The construction of an electric lighting plant in this city by the municipality or other corporation or person would be an invasion and violation of the exclusive privileges conferred upon said Tallahassee Gas and Electric Light Company by said ordinances, and to which the Capital City Light and Fuel Company has succeeded.

This company therefore takes this means of putting the council of said city and any intending contractor on notice of the claims of said company and of its intention to take the necessary steps to protect its interests under said ordinance in case of an attempted invasion of the franchises and privileges thereby granted.

We therefore respectfully request that you lay this protest before

the council of which you are the president, and have the same entered on the minutes. We have the honor to be,

Very respectfully,

CAPITAL CITY LIGHT AND FUEL CO.,
By FRED. T. MYERS, *Attorney.*

29 On the 1st day of March, 1900, subpœna in chancery issued.

On the 1st day of March, 1900, service of subpœna was made on defendants.

On the 23rd day of March, 1900, the defendant filed the following demurrer to the bill of complaint:

Circuit Court, Second Judicial Circuit of Florida, in and for Leon County.

THE CAPITAL CITY LIGHT & FUEL COMPANY, a Corporation under the Laws of the State of Florida, Complainant,
vs.
THE CITY OF TALLAHASSEE, a Municipal Corporation of the State of Florida, Defendant.

The demurrer of The City of Tallahassee, a municipal corporation of the State of Florida, to the bill of complaint of The Capital City Light & Fuel Company, the complainant.

This defendant, by protestation, not confessing all or any of the matters and things in the plaintiff's bill of complaint contained to be true in such manner and form as the same are therein set forth and alleged, doth demur to said bill and for cause of demurrer showeth that the plaintiff hath not in and by its said bill stated such a case as entitles it in a court of equity to any discovery from this defendant or to any relief against the defendant as to the matters contained in said bill or any of such matters.

Wherefore, and for divers other good causes of demurrer appearing in said bill, the defendant doth demur thereto and humbly demands the judgment of this court whether it shall by compelled
30 to make any further or other answer to said bill, and prays to be hence dismissed with its costs and charges in this behalf most wrongfully sustained.

THE CITY OF TALLAHASSEE,
[SEAL.] By R. B. GORMAN, *Mayor.*

Attest:
A. H. WILLIAMS, *City Clerk.*
GEO. P. RANEY,
City Attorney and of Counsel.

I hereby certify that the above demurrer is in my opinion well founded in point of law.

GEO. P. RANEY, *Of Counsel.*

STATE OF FLORIDA, }
Leon County. }

Robert B. Gorman, being duly sworn, deposes and says he is the mayor of The City of Tallahassee, the defendant above named, and that the above demurrer is not interposed for delay.

R. B. GORMAN.

Sworn to and subscribed before me this 23rd day of March, 1900.

COUNCIL A. BRYAN,
Clerk Circuit Court, Leon County, Florida,
By N. E. BASSETT, *D. C.*

On the 15th day of May, 1900, the final decree was made and entered in said cause in the words and figures as follows:

31 Circuit Court, Second Judicial Circuit of the State of Florida, in and for Leon County. In Chancery.

THE CAPITAL CITY LIGHT AND FUEL COMPANY, a Corporation under the Laws of the State of Florida, Complainant,
vs.
THE CITY OF TALLAHASSEE, a Municipal Corporation of the State of Florida, Defendant.

This cause coming on to be heard on the 24th day of March of the present year upon the application of the complainant for a temporary injunction according to the prayer of the bill of complaint, and also upon the defendant's demurrer to the bill of complaint, the absence of the previous setting down of such demurrer for argument and of formal notice of such hearing being waived, was argued orally by the respective counsel of the complainant and defendant, and subsequently such counsel filed written briefs, and the court being now advised of its judgment in the premises, it is hereupon ordered, adjudged, and decreed that the complainant's application for an injunction be, and the same is, denied, and that the defendant's demurrer be, and is hereby, sustained, and that the bill of complaint be, and is hereby, dismissed at the cost of the complainant, which costs will be taxed by the clerk.

Done, adjudged, and decreed this 15th day of May, A. D. 1900, at Tallahassee, Leon county, Florida.

JOHN W. MALONE, *Judge.*

32 On the 6th day of June, 1900, the complainant, by its attorney, filed and entered its appeal from the final decree entered in this cause on the 15th day of May, 1900, and its notice to defendant in the words and figures following:

In the Circuit Court, Second Judicial Circuit of Florida, in and for Leon County. In Chancery.

THE CAPITAL CITY LIGHT AND FUEL COMPANY, a Corporation under the Laws of the State of Florida, Complainant,
vs.
THE CITY OF TALLAHASSEE, a Municipal Corporation of the State of Florida, Defendant.

Now, on this 6th day of June, A. D. 1900, comes the complainant, The Capital City Light and Fuel Company, a corporation under the laws of the State of Florida, and enters its appeal to the supreme court of the State of Florida from the decree entered in this cause on the 15th day of May, A. D. 1900, denying complainant's application for an injunction and sustaining defendant's demurrer to complainant's bill and dismissing said bill, and this appeal is hereby made returnable the 9th day of July, A. D. 1900, being a day in the June term, A. D. 1900, of said supreme court, which is more than thirty and not more than fifty days from the date of the entry of this appeal; and notice is hereby given to the defendant, The City of Tallahassee, of this appeal.

FRED. T. MYERS,
Attorney for the Complainant.

June 6th, 1900.

33 STATE OF FLORIDA, }
County of Leon. }

I, Council A. Bryan, clerk of the circuit court in and for said county, do hereby certify that the foregoing entry and notice of appeal was filed in my office on the 6th day of June, A. D. 1900, and on the same day was duly entered in the Chancery Order Book of said court, at page 493.

In testimony whereof I have hereunto set my hand and the seal of said court on this the 6th day of June, A. D. 1900.

[SEAL.] COUNCIL A. BRYAN, *Clerk.*

On the 6th day of June, 1900, complainant filed its assignment of errors in the words and figures as follows:

On Appeal to the Supreme Court from the Circuit Court of the Second Judicial Circuit of the State of Florida in and for Leon County. In Chancery.

THE CAPITAL CITY LIGHT AND FUEL COMPANY, a Corporation under the Laws of the State of Florida, Complainant and Appellant,
vs.
THE CITY OF TALLAHASSEE, a Muncipal Corporation of the State of Florida, Defendant and Appellee.

34 The complainant in this cause having duly entered its appeal to the supreme court of the State of Florida from the decree rendered by the circuit court herein on the 15th day

of May, A. D. 1900, assigns as error the rendering of said decree of May 15th, A. D. 1900, by the circuit court, wherein and whereby complainant's application for an injunction was denied, defendant's demurrer to complainant's bill sustained, and complainant's bill dismissed.

FRED. T. MYERS,
Attorney for Complainant and Appellant.

June 6th, 1900.

Copy of the above assignment of errors served on me by complainant's counsel June 6th, 1900.

GEO. P. RANEY,
Attorney for Defendant and Appellee.

On the 6th day of June, 1900, complainant filed its instructions to the clerk of the circuit court for making up transcript of record, in words and figures as follows:

In the Circuit Court, Second Judicial Circuit of Florida, in and for Leon County. In Chancery.

THE CAPITAL CITY LIGHT AND FUEL COMPANY, a Corporation under the Laws of the State of Florida, Complainant,
vs.
THE CITY OF TALLAHASSEE, a Municipal Corporation of the State of Florida, Defendant.

To the clerk of said court:

You are hereby directed to commence the making up of the
35 certified transcript of the record of this cause, to be used on appeal on the 22nd day of June, 1900; and you are instructed on the part of the appellant to copy and make a part of said record (1) the bill of complaint, with exhibits thereto, (2) the demurrer to the bill, (3) the final decree rendered May 15th, 1900, (4) the entry of appeal made June 6th, 1900, (5) the assignment of errors, filed June 6th, 1900, and (6) these instructions; and you will simply recite the issuing and service of subpœna.

FRED. T. MYERS,
Attorney for Complainant and Appellant.

June 6th, 1900.

Copy of above instructions received by me this June 6th, 1900.

GEO. P. RANEY,
Attorney for Defendant and Appellee.

STATE OF FLORIDA,
County of Leon.

I, Council A. Bryan, clerk of the circuit court in and for the county of Leon, State of Florida, do hereby certify that the foregoing pages, numbered from one to thirty-eight, inclusive, contains a correct transcript of the record of the judgment in the case of The Capital City Light and Fuel Company, a corporation under the laws of

the State of Florida, plaintiff, against The City of Tallahassee, a municipal corporation of the State of Florida, defendant, and a true and correct recital and copy of all such papers and proceedings in said cause, as appears upon the records and files in my office, that have been directed to be included in said transcript by the written demands of the said parties.

36 In testimony whereof I have hereunto set my hand and affixed the seal of said court this 26th day of June, A. D. 1900.

[SEAL.] COUNCIL A. BRYAN,
Clerk of the Circuit Court for the County of Leon.

Whereupon came the parties, both appellant and appellee, in the said cause, by their respective counsel, and submitted their cause to the said supreme court upon the said transcript of the record and written arguments.

And at a subsequent day, to wit, on the 10th day of October, A. D. 1900, judgment was rendered by the said supreme court of the State of Florida in words and figures as follows, to wit:

THE CAPITAL CITY LIGHT AND FUEL Company, a Corporation under the Laws of Florida, Appellant,
vs.
THE CITY OF TALLAHASSEE, a Municipal Corporation of the State of Florida, Appellee.

Upon Appeal from a Decree of the Circuit Court within and for the County of Leon.

This cause having been submitted to the court at a previous day of this term upon a transcript of the record of the decree aforesaid and the argument of counsel for the respective parties, and the

37 record having been seen and inspected, and the court being now advised of its judgment to be given in the premises, it seems to the court that there is no error in the said decree. It is therefore considered, ordered, and adjudged by the court that the said decree of the circuit court be, and is, affirmed; and it is further ordered that the appellant do pay the costs of this proceeding, which costs amount to the sum of —; all of which is ordered to be certified to the court below.

R. F. TAYLOR,
Chief Justice.

And afterwards, to wit, 9th day of November, A. D. 1900, came the appellant, The Capital City Light and Fuel Company, by counsel, and filed in open court before the chief justice their petition for the allowance of a writ of error to said judgment, returnable to the Supreme Court of the United States, according to the rules of said court, the acts of Congress, and the Constitution of the United States in such cases made and provided; which petition was in the words and figures as follows, to wit:

In the Supreme Court of the State of Florida.

CAPITAL CITY LIGHT AND FUEL COMPANY, a Corporation under the Laws of the State of Florida, Appellant,
vs.
CITY OF TALLAHASSEE, a Municipal Corporation of the State of Florida, Appellee.

38 To the Honorable R. F. Taylor, chief justice of the supreme court of the State of Florida:

The petition of The Capital City Light and Fuel Company, the appellant in the above-entitled cause, showeth that a final decree was rendered by the said supreme court of the State of Florida in the above-stated cause on the 10th day of October, A. D. 1900, wherein was drawn in question the validity of a statute of or authority exercised under the said State of Florida, on the ground of their being repugnant to the Constitution of the United States, namely, the validity of a statute of said State approved May 27th, 1899, and entitled "An act to enable the city of Tallahassee to exercise the powers provided by chapter 4600 of the Laws of Florida, entitled 'An act to enable cities and towns to manufacture and distribute gas and electricity, and to construct, purchase, lease, and establish and maintain within its limits one or more plants for the manufacture and distribution of gas and electricity for furnishing light for municipal use, and for the use of such of its inhabitants as may require and pay for the same as herein provided,' approved June 5th, 1897, and to declare the manner in which such city may exercise such powers," and the validity of an ordinance of the said city of Tallahassee passed under authority of the said statute and approved September 11th, 1899, and entitled "An ordinance providing for the issue of bonds by the city of Tallahassee for the purpose of establishing and maintaining and electric light plant for municipal use and the use of its inhabitants, and providing for the submission of the question of the ratification of such ordinance to an election of the qualified voters of said city;" which statute and ordinance, it was contended by appellant, were repugnant to the Constitution of the United States, in that they violated the obligation of a contract which conferred upon appellant the exclusive
39 privilege of operating gas and electric light works in the said city of Tallahassee, and the decision of said court was in favor of the validity of the said statute and of the said ordinance, all of which appears of record in the said supreme court of the State of Florida.

Your petitioner therefore prays your honor to allow a writ of error to the appellant in the above-stated cause, returnable to the Supreme Court of the United States, according to the rules of said court, the acts of Congress, and the Constitution of the United States in such cases made and provided; and your petitioner will ever pray, &c.

FRED. T. MYERS,
Attorney for the Appellant.

Whereupon, on the same day, the prayer of the petitioner was granted by an order in words and figures as follows, to wit:

Upon reading and considering the foregoing petition, and it appearing that the said cause is one in which the appellant is entitled to a writ of error under the Constitution of the United States and the acts of Congress, the writ of error prayed for is hereby allowed.

Done this 9th day of November, 1900.

R. F. TAYLOR,
Chief Justice Sup. Ct. of Fla.

40 And thereafter, upon the same day, upon the presentation to the chief justice of said petition for the allowance of a writ of error, the same was allowed by the chief justice, as appears upon the original writ of error as accompanying this return, and upon the 22nd day of November, A. D. 1900, a citation was allowed by the chief justice, as appears upon the original citation accompanying this return and the writ of error aforesaid.

And thereafter, to wit, on the 23rd day of November, A. D. 1900, and during the term of the said court, the original bond of the plaintiff in error in this writ of error, approved by the Hon. R. F. Taylor, chief justice of the supreme court of the State of Florida, was filed in words and figures as follows, to wit:

Know all men by these presents that we, The Capital City Light and Fuel Company, a corporation under the laws of the State of Florida, as principal, and the Columbia Avenue Saving Fund, Safe Deposit, Title and Trust Co., G. W. Saxon, Julius Diamond, and The West End Trust and Safe Deposit Co., as sureties, are held and firmly bound unto the City of Tallahassee, a municipal corporation of the State of Florida, in the full and just sum of twenty-five hundred dollars, to be paid to the said City of Tallahassee, its successors or assigns; to which payment, well and truly to be made, we bind ourselves, our successors, heirs, executors, and administrators, jointly and severally, firmly by these presents.

Sealed with our seals and dated this the 23rd day of November, in the year of our Lord nineteen hundred.

Whereas lately, at a term of the supreme court of the
41 State of Florida, in a cause pending in said court between The Capital City Light and Fuel Company, a corporation under the laws of the State of Florida, appellant, and The City of Tallahassee, a municipal corporation of the State of Florida, appellee, a final judgment was rendered by said court against the said appellant on the tenth day of October, in the year of our Lord nineteen hundred; and whereas the chief justice of the supreme court of the State of Florida has, at the suit of the said appellant, allowed a writ of error to the Supreme Court of the United States to review the judgment aforesaid of the said supreme court of the State of Florida:

Now, therefore, the condition of the above obligation is such that if the said Capital City Light and Fuel Company shall prosecute said writ to effect and shall answer all damages and costs that may be awarded against said company if it fails to make good its plea,

then the above obligation to be void; otherwise to remain in full force and virtue.

CAPITAL CITY LIGHT & FUEL CO.,
By JOS. S. KEEN, JR., *President.*

[Corporate Seal of Capital City Light & Fuel Co.]

Attest: H. BAYARD HODGE, *Sec'y.*
G. W. SAXON. [SEAL.]
JULIUS DIAMOND. [SEAL.]
JNO. K. CUMING, *Pre'd't.*

[Seal of Columbia Ave. Sav. Fund, Safe Dep., Title & Trust Co.]

Attest: WALTER SCOTT, *Sec'y.*
THE WEST END TRUST AND SAFE DEPOSIT CO.,
By HORACE A. DOAN, *Pres't.*

[Seal of West End Trust and Safe Dep. Co.]

Attest: CHAS. E. WOLBERT, *Sec.*

[50c. documentary stamp, cancelled.]

Taken and approved this November 23rd, 1900.

R. F. TAYLOR,
Chief Justice Supreme Court of Florida.

42 UNITED STATES OF AMERICA, }
State of Florida, } *ss:*

I, B. B. Wilson, clerk of the supreme court of the State of Florida, do hereby certify that the foregoing pages, numbered from one (1) to forty-one (41), inclusive, contain a true and complete transcript of the record of the proceedings had in said court in the case of The Capital City Light and Fuel Company, a corporation under the laws of Florida, appellant, against The City of Tallahassee, a municipal corporation of the State of Florida, appellee, as the same remain of record and on file in said office.

Seal Supreme Court of the State of Florida.

In testimony whereof I have caused the seal of said supreme court to be hereunto affixed, at the city of Tallahassee, in the State of Florida, this the 1st day of December, in the year of our Lord nineteen hundred.

B. B. WILSON,
Clerk Supreme Court, State of Florida.

43 The foregoing transcript of the record of the proceedings of the supreme court of the State of Florida in the case of The Capital City Light and Fuel Company, a corporation under the laws of Florida, *vs.* The City of Tallahassee, a municipal corporation of the State of Florida, is transmitted to the Supreme Court of the

United States in obedience to a writ of error issued herein, the original of which is hereto attached.

[Seal Supreme Court of the State of Florida.]

B. B. WILSON,
Clerk Supreme Court, State of Florida.

44 THE UNITED STATES OF AMERICA, *ss:*

The President of the United States to the honorable the supreme court of the State of Florida, Greeting:

Because in the records and proceedings, as also in the rendition of the judgment of a plea which is in the said supreme court of the State of Florida, before you or some of you, being the highest court of law and equity of the said State in which a decision could be had in the said suit between the Capital City Light and Fuel Company, a corporation under the laws of the State of Florida, and the City of Tallahassee, a municipal corporation of the State of Florida, wherein was drawn in question the validity of a statute of and an authority exercised under said State of Florida, on the ground of their being repugnant to the Constitution and laws of the United States, and the decision was in favor of such their validity, a manifest error hath happened, to the great damage of the said The Capital City Light and Fuel Company, as by its complaint appears, we, being willing that error, if any hath been, should be duly corrected and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington on the twenty-first day of December, A. D. nineteen hundred (A. D. 1900), in the Supreme Court to be then and there held, that, the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error what of right and according to the laws and customs of the United States should be done.

Witness the Honorable Melville W. Fuller, Chief Justice of the said Supreme Court, the 22nd day of November, in the year of our Lord one thousand nine hundred (A. D. 1900), and clerk of the circuit court of the United States for the fifth judicial circuit, northern district of Florida.

[Seal U. S. Circuit Court, Northern Dist. of Florida.]

F. W. MARSH,
Clerk of the United States Circuit Court for the Fifth Judicial Circuit and the Northern District of Florida.

Writ of error allowed November 9th, A. D. 1900.
R. F. TAYLOR,
Chief Justice Supreme Court of Florida.

[Endorsed:] Filed Nov. 22, 1900. B. B. Wilson, clerk supreme court, State of Florida.

45 THE UNITED STATES OF AMERICA, *ss:*

The President of the United States of America to the City of Tallahassee, a municipal corporation of the State of Florida, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washington, on the 21st day of December, A. D. nineteen hundred, pursuant to a writ of error filed in the clerk's office of the supreme court of the State of Florida, wherein The Capital City Light and Fuel Company is plaintiff in error and you are defendant in error, to show cause, if any there be, why the final decree therein rendered against the said plaintiff in error, as in the said writ of error mentioned, should not be corrected and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable R. F. Taylor, chief justice of the supreme court of the State of Florida, this 22nd day of November, in the year of our Lord nineteen hundred (A. D. 1900).

R. F. TAYLOR,
Chief Justice of the Supreme Court of Florida.

By the chief justice.
Attest:

[Seal Supreme Court of the State of Florida.]

B. B. WILSON,
Clerk Supreme Court, State of Florida.

We hereby acknowledge service of this citation this 22nd day of November, 1900.

GEO. P. RANEY,
Attorney for The City of Tallahassee, Def't in Error.
R. B. GORMAN,
Mayor of the City of Tallahassee.

[Endorsed:] Filed Nov. 22, 1900. B. B. Wilson, clerk supreme court, State of Florida.

46 In the Supreme Court of Florida, June Term, A. D. 1900.

THE CAPITAL CITY LIGHT AND FUEL COMPANY, a Corporation under the Laws of Florida, Appellant,
vs.
THE CITY OF TALLAHASSEE, a Municipal Corporation of the State of Florida, Appellee.
} Leon County.

Statement.

The Tallahassee Gas and Electric Light Company was incorporated in December, 1887, under the general incorporation laws then in force. In its articles of association it claimed power to sue and be sued, and to hold, lease, buy, sell, mortgage, or otherwise dispose of such realty and personalty as might be necessary for the pur-

poses therein stated. Its object and purposes were, as therein stated, to construct, maintain, and operate gas works and electric light works in the city of Tallahassee, to manufacture gas for light and fuel, or to dispose of and deal in coal or wood for fuel, and to maintain and operate electric light machinery for supplying lights in said city, or for manufacturing and dealing in all manner of artificial light or heat within said city. The duration of the association was to be for twenty-five
47 years. The capital stock of the company was to be $50,000, divided into shares of $100 each. The indebtedness was limited to an amount not exceeding the capital stock. Its principal place of business was to be at Tallahassee, Florida. The capital was to be paid in as required by law and by-laws to be adopted. The business was to be conducted by a board of not less than three nor more than five directors, one of whom was to be made president, and officers were required to be elected annually. Such subordinate officers were provided for as might be determined. After the incorporation of said company it applied to the city of Tallahassee for the franchise of erecting gas and electric light works in the city, and in January, 1888, the city passed an ordinance entitled "An ordinance to grant certain privileges to the Tallahassee Gas and Electric Light Company," which by its first section provided that the Tallahassee Gas and Electric Light Company be, and was thereby, authorized to construct gas and electric light works in the city of Tallahassee, and for that purpose the said company were to have the right to lay their pipes in any and all streets in said city and in the alleys and lots of the same, and to erect such lamp posts or poles or towers as might be necessary or essential for furnishing gas or electric lights in said city, and to this end said company was authorized to make such excavations or erect such structures, poles, or towers and run wires thereto along the streets of the city, as might be necessary or essential, provided that in laying such pipes or erecting such lamp posts, poles, or towers the said company should not obstruct any street for a longer term than twelve hours. The second, third, fourth, and fifth sections regulated the manner of laying pipes and erecting poles, towers, &c. The sixth section provided that the company should not be permitted to manufacture or supply gas for
48 illuminating purposes of less than eighteen-candle power, or to charge private consumers for said gas at any time an amount exceeding $2.50 per one thousand feet, and the charge to the city for gas lamps was not to exceed $30 per annum for each lamp, of not less than twenty-candle power, through burners of a capacity of four feet per hour. The seventh section provided that within thirty days from the taking effect of the ordinance the said company, their associates, successors, and assigns, were required to file a written acceptance thereof in the office of the city clerk, whereupon the ordinance was to become binding upon both parties; the construction of the gas works was required to be commenced within thirty days after filing said acceptance, and said gas works were required to be completed and in practical operation within six months after the commencement of the construction thereof, and the com-

pany was thereby required to put in and operate electric lights as soon as sufficient consumers could be secured to pay eight per cent. interest per annum on the additional capital required to purchase the machinery for and put in practical operation the said electric lights. Section eight provided that if the company failed to complete the gas works within the time prescribed in the foregoing section, or failed to furnish gas at any time for the space of six months, or violated any of the provisions of the ordinance, the city council in its discretion might declare the ordinance null and void and repeal the same. The ninth section related to the lease of certain lands by the city to the company for a nominal sum per year for ninety-nine years. The tenth section provided that the city, in consideration of the foregoing requirements being complied with on the part of the company, their associates, successors, and assigns, obligated itself to take all gas it might wish to use in lighting its streets or buildings
49 from said company at a price of not more than $1.50 per thousand feet, or such as might be used in public buildings used by the city, and at a price of not more than $30 per annum for each street lamp, as provided for in section six of the ordinance, for the period of twenty-five consecutive years from the completion of the gas works, provided that nothing therein was to be construed as an obligation on the part of the city to take any gas from the company. Section eleven was as follows: "That the privileges and licenses herein and hereby granted shall be exclusive in and to said Tallahassee Gas and Electric Light Company, their associates, successors, and assigns, for and during the term of twenty-five years."

The Tallahassee Gas and Electric Light Company constructed its gas works under and in conformity to the terms of its charter and the ordinance, and began and continued the operation of the same and exercised the powers, privileges, and franchises conferred on it by the charter and ordinance, including the contract for lighting the streets and buildings of the city, without molestation or interference until November, 1893, when the gas works, plant, and property of every kind and character of the company were taken possession of by a receiver appointed by the circuit court of Leon county in a chancery cause wherein Wm. M. McIntosh, Jr., as trustee, was complainant and the company was defendant, and by virtue of a decree of foreclosure and sale made in said cause, dated January 4, 1894, all lands belonging to the company, with the tenements, hereditaments, and appurtenances thereon and thereunto belonging or appertaining, and also the plant, machinery, and attachments thereto, whether movable or immovable or whether pertaining to the realty or personalty, and the corporate franchise of
50 said company, and all classes of property, real, personal, and mixed, then owned by said company, were sold at public sale on February 5, 1894, to Wm. A. Rawls, and a deed executed to him therefor under decree of the court. Thereafter, in March, 1894, the appellant company was incorporated under the general incorporation laws then in force for the purpose of acquiring and operating, under the terms of the city ordinance, the property purchased by Rawls under the decree, and in pursuance of this purpose Rawls

made over said property to the appellant company, who entered into possession and assumed the management and control thereof and continued the manufacture of gas for the purpose of supplying the city and its inhabitants with light and heat, and enlarged and extended the plant to meet the increased demands of the city and its inhabitants, and the city has ever since recognized, treated, and dealt with the appellant company as the lawful successor to the Tallahassee Gas and Electric Light Company and the legal assignee of all the rights, franchises, privileges, and contracts created and conferred on the Tallahassee Gas and Electric Light Company by the said ordinance. The general nature of the business to be transacted by the appellant corporation, as expressed in its articles of association, was to acquire, construct, improve, maintain, and operate gas works and electric light works in and adjacent to the city of Tallahassee, and to manufacture gas for light and fuel, to dispose of and deal in coal or wood for fuel, to construct, maintain, and operate electric light machinery for supplying lights in and about said city, or for manufacturing and dealing in any and all manner of artificial light or heat within or adjacent to said city.

At no time since the establishment of the gas works could there have been procured sufficient consumers of electric light to
51 pay eight per cent. interest per annum on the additional capital required to purchase the machinery for and to put in practical operation an electric lighting system in the city of Tallahassee.

By chapter 4600, Acts of 1897, cities and towns were expressly authorized to construct, purchase, lease or establish, and maintain one or more plants for manufacture or distribution of gas or electricity for furnishing light for municipal use and for the use of such of its inhabitants as might require and pay for same under conditions therein mentioned.

By chapter 4875, Laws of 1899, the city of Tallahassee was specially authorized to exercise the powers provided by the said act of 1897, and the manner of exercising such powers was therein specified. In pursuance of the provisions of these statutes, the city of Tallahassee has since August, 1899, done everything necessary to enable it, under the authority there conferred, to construct, establish, and maintain an electric light plant for the manufacture and distribution of electricity for furnishing light for municipal use and for the use of such of its inhabitants as may require and pay for same, and in March, 1900, was preparing to construct such a plant. Thereupon a bill was filed in the circuit court of Leon county by appellant against the city alleging the foregoing facts and praying that the city be enjoined from establishing such a plant, alleging that its establishment would infringe upon appellant's alleged exclusive right to establish and maintain an electric light plant in the city of Tallahassee, which it claims to have derived from the Tallahassee Gas and Electric Light Company in the manner stated. It is claimed that the Tallahassee Gas and Electric Light Com-
52 pany derived such exclusive right from the provisions of its charter and the city ordinance, and that such charter and

ordinance constitute contracts between it and its assigns and the city, which cannot be impaired by subsequent legislation authorizing the city to construct and maintain and electric light plant.

The cause was heard in the court below upon an application for temporary injunction as prayed and upon a demurrer to the bill for want of equity filed by the city. Upon the hearing, May 15th, 1900, the application for injunction was refused, the demurrer sustained, and the bill dismissed; from which decree this appeal was entered.

Opinion.

Per Curiam (after stating the facts):

As will be observed from the statement of the pleadings, the city of Tallahassee is asserting no right to put in and operate a plant for manufacturing gas to supply light and heat for the use of the city or its inhabitants. It proposes to erect a plant to furnish lights for municipal use and for the use of its inhabitants by means of electricity only. A careful reading of the ordinance passed in 1888 will show that the city is under no obligation whatever to the appellant or its predecessor company to light the streets and public buildings of the city with either gas or electricity manufactured by said companies.

53 Nothing is said in the ordinance about lighting the streets or public buildings with electricity manufactured by the company. In respect to gas, the city was not required to use any at all, but it obligated itself to take all gas that it might wish to use in lighting its streets and buildings from the company at prices not to exceed the amounts named for a certain term of years. There is no contract, therefore, between the city and the company that the latter shall have the right to furnish the city for lighting its streets and public buildings all or any electricity used for that purpose, nor is there any stipulation in the ordinance that the city will use nothing but gas, nor that the city will not own or operate an electric light plant for supplying the city and its inhabitants with light. If the city is debarred from erecting an electric light plant by the ordinance passed by it, it is because that ordinance legally grants the company the exclusive privilege and license to use the streets, alleys, and lots of the city for the purpose of constructing and operating a plant and its instrumentalities for furnishing electric lights in the city. Our first duty is, therefore, to determine whether the ordinance legally grants this exclusive privilege and license.

At the time of the passage of the ordinance all the powers possessed by the city of Tallahassee in reference to lighting the city and authorizing the erection of structures in and over the streets were contained in the general incorporation law for cities and towns. A general power was given "to provide for the lighting of the streets of the city or town" (section 21, p. 249, McClellan's Dig.), and also "to regulate, improve, alter, extend and open streets, lanes and avenues, and to cause encroachments and obstructions, decayed buildings and

ruins to be removed." Section 17, p. 248, *ibid.* These powers
54 gave the city no authority to grant any exclusive privilege to use the streets of the city for the purpose of laying pipes or erecting poles and towers for furnishing gas or electric lights. Florida Central and Peninsular R. R. Co. *v.* Ocala Street and Suburban R. R. Co., 39 Fla., 306; 22 South. Rep., 692; Grand Rapids E. L. & P. Co. *v.* Grand Rapids E. E. L. & F. G. Co., 33 Fed. Rep., 659, and authorities there cited. So far as any exclusive privilege for the use of the streets claimed under the ordinance by the appellant or its alleged predecessor is concerned, it is sufficient to say that no such exclusive right could be granted by the city because of the want of power to grant it. That portion of the ordinance attempting to grant such exclusive use, either as to gas or electricity, is therefore void. The appellant does not, however, rely exclusively upon the provisions of the statutes quoted for authority in the city to grant the exclusive feature of the ordinance in question. It contends that the ordinance may be sustained under a power conferred by the general incorporating act under which its alleged predecessor company was chartered, to the effect that "any corporation organized and put into successful operation under this chapter shall have exclusive privileges for the purposes of its creation for the term of twenty years from the date the corporation commenced to carry out in good faith the terms of its articles of incorporation; provided, however, that this investment shall not so operate as to divest any future legislature of those powers of government which are inherent and essential attributes of sovereignty, to wit: the power to create revenue for public purposes, to provide for the common defense, to provide safe and convenient ways for the public necessity and convenience and to take private property for the public use, and the like." Section 30,
McClellan's Dig., p. 234. We do not think this section adds
55 anything to the powers of the city; it has no reference whatever to municipal bodies; it does not purport to confer any power on them or to aid or supplement the powers conferred by the general law appertaining to the creation of municipal bodies; it purports to grant certain privileges directly by the legislature, but it does not pretend to authorize municipal bodies to grant any, and it is clear from its language that there was no design in enacting it to confer power on municipalities to grant exclusive privileges. Whatever rights and privileges of an exclusive nature the Tallahassee Gas and Electric Light Company possessed must therefore be derived from the general incorporation act under which it was incorporated, and this brings us to the further contention that that company by the provisions of the statute last quoted had an exclusive right to use the streets of the city so far as the business of manufacturing and distributing gas and electricity for the use of the city and its inhabitants is concerned, and that the appellant company has succeeded to all of its rights and privileges; and here it may be well to remark that the statute referred to was repealed before the appellant corporation was chartered under the general law, so that if it possesses any exclusive privileges of the nature claimed they are not derived from its own charter or any ordinance

of the city enacted after its incorporation, but are derived solely from its alleged purchase of its predecessor's property, corporate franchises, and privileges.

The appellee contends that exclusive privileges of the character claimed in this case are not embraced within the class of exclusive privileges which the statute quoted, properly interpreted, meant to grant, and, further, that if they are, such privileges are per-
56 sonal to the original corporation to whom granted, and cannot be transferred to another by mortgage or by judicial sale. It claims also that the public nature of the business in which the company was authorized to engage brings the charter within the proviso of the section which reserves power in the legislature to take away the exclusive feature of the privileges granted under circumstances therein mentioned, and that therefore the legislature had power to repeal the statute, as it did by the adoption of the Revised Statutes of 1892, or at least to modify the exclusive character of the privilege granted so as to authorize the city, for the public interest and convenience, to establish and operate an electric light plant within the city, as it did by the acts of 1897 and 1899. These are questions which we do not find it necessary to decide in the present case, being content to rest our decision upon other grounds which we deem conclusive.

It appears from the pleadings that neither the Tallahassee Gas and Electric Light Company nor the appellant company ever established an electric light plant in the city of Tallahassee in pursuance of the authority conferred upon either of them. From the organization of the first company up to the time the gas plant was sold at judicial sale about six years had elapsed, and from the time of the judicial sale to the time the city began proceedings to enable it to establish an electric light plant about six years more elapsed. During all this period of time neither company attempted to construct an electric light plant as authorized by its charter. In the meantime that provision in the general incorporation law relating to exclusive privileges had been repealed by the legislature of 1891, and an act passed in 1897 specially authorizing cities and towns to establish gas and
57 electric light plants to supply themselves and their citizens with light, and still later, in 1899, special legislative authority was given the city of Tallahassee to establish an electric light plant. Neither the Tallahassee Gas and Electric Light Company nor appellant company has acquired any vested right to erect an electric light plant by the investment of any money in any such plant, and the question arises as to whether or not any constitutional right has been impaired by the repeal of the statute granting the alleged exclusive privilege and by the legislation authorizing the city to do that which is a public benefit, and that which for some twelve years the companies have neglected to do as authorized by their charters and the city ordinance. We are unable to see that any vested right of either company, so far as the establishment of an electric light plant is concerned, is impaired by the legislation which authorizes the city to do that which it now proposes to do. In the first place, the statute, properly construed, does not grant the exclusive privilege in respect to the electric light plant as claimed.

A grant of exclusive privileges to appellant's predecessor would be the grant of a franchise from the State, the possession of which would enable it to obtain a practical monopoly of the gas and electric light business in Tallahassee for the term specified. All such grants are strictly construed against the grantee, and nothing passes thereby but such as is clearly intended. Saginaw Gas Light Co. *v.* City of Saginaw, 28 Fed. Rep., 529; Florida, Atlantic & Gulf Central R. R. Co. *v.* Pensacola & Georgia R. R. Co., 10 Fla., 145. Under the express language of this statute the exclusive privilege did not attach until the corporation was not only organized, but put into successful operation, and the privileges were to attach for twenty years from the time the corporation commenced to carry out in good faith the terms of its
58 articles of incorporation. The condition upon which the exclusive privilege, so far as the electric light plant was concerned, has never been performed, for the company has never been put into successful operation, so far as that branch of its business is concerned, nor has it ever commenced to carry out in good faith the terms of its articles of incorporation in regard to erecting an electric light plant. The first company never acquired the right to the exclusive privilege mentioned in the statute, because it failed to perform the condition precedent, and therefore it had no exclusive privilege to transfer to appellant company, so far as the electric light plant is concerned. In the next place, even if an exclusive privilege of this nature, tending to establish a monopoly, was granted without such express condition precedent as we find in our statute, such grant does not become a contract or a vested right so as to be protected by the constitution of the State or the United States, until the company has, to say the least, begun to do the thing required by the charter as the consideration for the grant of such privilege. Pearsall *v.* Great Northern Railway Co., 161 U. S., 646; 16 Sup. Ct. Rep., 705; Louisville & Nashville Railroad Company *v.* Kentucky, 161 U. S., 677; 16 Sup. Ct. Rep., 714. See, also, Chincleclamouche Lumber and Boom Co. *v.* Commonwealth, 100 Pa. St., 438. It would be going too far to hold that the clauses of those constitutions protecting the obligations of contracts from impairment would enable one legislature to tie the hands of another in matters of public convenience and interest, such as lighting cities, by granting charters containing exclusive privileges to perform these public benefits, which are held for speculative or other purposes, without attempt to execute the powers granted. Gonzalez *v.* Sullivan, 16 Fla., 791; text, 820; Elliott on Roads and Streets, p. 569 *et seq.*

59 Our attention is called to that clause in the seventh section of the city ordinance which required the company to put in electric lights only when sufficient consumers could be secured to pay eight per cent. interest per annum on the additional capital required to purchase the machinery and put in successful operation electric lights. It would appear from this clause that from the beginning the company only intended to avail itself immediately of that provision of its charter authorizing it to erect a gas plant and to use the other power granted by its charter, together with the city ordi-

nance, to shut out competition in its business from electric light companies, intending only to put in an electric light plant whenever that plant could be made to secure it an annual profit on its investment in that plant of eight per cent. It is quite apparent that the legislature never intended to secure to it any such right, but, on the contrary, intended the privilege to extend only so far as to secure the company from competition in matters wherein it had complied with its charter by being put into successful operation. We have seen that the city had no authority to grant exclusive privileges to use its streets for the purpose of furnishing light from gas and electricity, but even if it did have such power it could not confer such exclusive right and at the same time defer construction of the plant until such time as it could be made to pay eight per cent. upon the investment. The effect of such a provision in an ordinance like the one we are considering is that the city will not permit any other person or corporation to use its streets for the public purpose of furnishing electric lights for twenty-five years, but at the same time will not require the person or corporation to whom the exclusive privilege is granted to furnish such lights until such time as
60 it can make an annual profit of eight per cent. on its investment. The city has no such power over its streets, which are held by it in trust for the public benefit (Florida Central and Peninsular R. R. Co. *v.* Ocala Street and Suburban R. R. Co., 39 Fla., 306; 22 South. Rep., 692; Gonzalez *v.* Sullivan, 16 Fla., 791; text, 820), and even if it did, so long as the grantee failed to invest money in a plant, the ordinance could be repealed or modified, being without consideration.

We have not overlooked the fact that the first company performed its charter powers in part by erecting and operating a gas plant, and as to that plant and the business connected therewith it may have possessed exclusive privileges under the statute which could not be impaired by subsequent legislation, and it may be that such privileges passed to appellant through the judicial sale. As to that we express no opinion. But while the purpose of erecting both plants would be the same, in that they would both furnish light to the city and its people, yet they furnish a different light and require separate and different plants and instrumentalities for their operation. We think they are so distinct in character as to amount to separate undertakings, and they are so treated in the articles of association of both companies and in the ordinance. Power to operate the one would not include power to operate the other, and permission to use the streets for one would not include permission to use them for the other. City of Newport *v.* Newport Light Co., 89 Ky., 454; 12 S. W. Rep., 1040. The exclusive privileges as to the electric light plant could not have operated as a consideration for erecting the gas plant, for such privileges under the statute were to attach to the electric light business only when that plant was put in.

The decree of the court below is affirmed.

61 I, B. B. Wilson, clerk of the supreme court of the State of Florida, do hereby certify that the foregoing pages, numbered from forty-six (46) to sixty (60), inclusive, contain a true and correct copy of the statement of case and opinion of the supreme court of Florida in the case of The Capital City Light and Fuel Company, a corporation under the laws of Florida, appellant, *vs.* The City of Tallahassee, a municipal corporation of the State of Florida, which was filed in my office on October 10th, A. D. 1900.

Seal Supreme Court of the State of Florida.

In testimony whereof I have hereunto set my hand and affixed the seal of said supreme court, at Tallahassee, the capital, this 1st day of December, A. D. 1900.

B. B. WILSON,
Clerk Supreme Court, State of Florida.

Endorsed on cover: File No., 17,990. Florida supreme court. Term No., 505. The Capital City Light and Fuel Company, plaintiff in error, *vs.* The City of Tallahassee. Filed December 10th, 1900.